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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

STATE OF MARYLAND,

Petitioner

vs.

JERRY LEE WILSON,

Respondent.

On Writ of Certiorari to the Court of Special Appeals of Maryland

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the bright-line rule of *Pennsylvania* v. *Mimms* extend to passengers of legally stopped automobiles?

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Doggett v. United States, 505 U. S. 647, 120 L. Ed. 2d 520, 112 S. Ct. 2686 (1992) 5

Dunaway v. New York, 442 U. S. 200, 60 L. Ed. 2d 824, 99 S. Ct. 2248 (1979) 12, 13

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Michigan v. Summers, 452 U. S. 692, 69 L. Ed. 2d 340, 101 S. Ct. 2587 (1981) 14, 15, 18, 20

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New York v. Belton, 453 U. S. 454, 69 L. Ed. 2d 768, 101 S. Ct. 2860 (1981) 6, 13

New York v. Class, 475 U. S. 106, 89 L. Ed. 2d 81, 106 S. Ct. 960 (1986) 23, 24

Pennsylvania v. Mimms, 434 U. S. 106, 54 L. Ed. 2d 331, 98 S. Ct. 330 (1977) . . . . . Passim

People v. Defore, 150 N. E. 585 (N. Y. 1926) 7

People v. Martinez, 466 N. W. 2d 380 (Mich. App. 1991) 21

People v. Robinson, 543 N. E. 2d 733 (N. Y. 1989) 21

State v. Ferrise, 269 N. W. 2d 888 (Minn. 1978) 21

State v. Wilson, 664 A. 2d 1 (Md. App. 1995) 2, 3, 24, 25

Stone v. Powell, 428 U. S. 465, 49 L. Ed. 2d 1067, 96 S. Ct. 3037 (1976) 7

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United States v. Chadwick, 433 U. S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476 (1977) 7

United States v. Cortez, 449 U. S. 411, 66 L. Ed. 2d 621, 101 S. Ct. 690 (1981) 6, 8

United States v. Janis, 428 U. S. 433, 49 L. Ed. 2d 1046, 96 S. Ct. 3021 (1976) 6

United States v. Leon, 468 U. S. 897, 82 L. Ed. 2d 677, 104 S. Ct. 3405 (1984) 6

United States v. Robinson, 414 U. S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973) 10, 11, 14, 19

United States v. Sokolow, 490 U. S. 1, 104 L. Ed. 2d 1, 109 S. Ct. 1581 (1989) 11

United States v. White, 648 F. 2d 29 (D. C. Cir. 1981) . . 18

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Treatises

W. LaFave, Search and Seizure (3d ed. 1996) 5, 17, 18, 19, 22

W. LaFave & A. Scott, Substantive Criminal Law (1986) 5

8 J. Wigmore, Evidence (McNaughten rev. 1961) 7

Miscellaneous

Amsterdam, Perspectives on the Fourth Amendment, 58 Minn. L. Rev. 349 (1974) 9

Douglas, Stare Decisis, 49 Colum. L. Rev. 735 (1949) 10

Hobson, Flight and *Terry*: Providing the Necessary Bright Line, 3 Maryland J. Contemp. Legal Issues 119 (1992) 14

LaFave, The Fourth Amendment in an Imperfect World: On Drawing 'Bright Lines' and 'Good Faith,' 43 U. Pitt. L. Rev. 307 (1982) 5

LaFave, Constitutional Rules for Police: A Matter of Style, 41 Syracuse L. Rev. 849 (1990) 9

F. Remington, *et al.*, Criminal Justice Administration (rev. ed. 1982) 9

D. Rowland & J. Bailey, The Law Enforcement Handbook (1985) 20, 22

U. S. Dept. of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics—1994 (1995) 18

U. S. Dept. of Justice, Federal Bureau of Investigation, Killed in the Line of Duty (1992) 20, 21

P. Weston, The Police Traffic Control Function (4th ed. 1978) 18

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of victims and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

The present case involves one of the great sources of police deaths, traffic stops. Each stop carries the potential for tragedy as the officer encounters the occupants of the vehicle. While only a small portion of these encounters end violently, there is no simple way of readily separating the potentially violent from the routine. The sheer volume of traffic stops ensures a too-plentiful supply of tragedies.

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1. Both parties have given written consent to the filing of this brief.

In *Pennsylvania* v. *Mimms*, this Court helped to alleviate this problem by allowing officers to order drivers out of cars at traffic stops. This bright-line rule aids officer safety by simplifying the traffic stop and giving officers a tactic for maintaining control of the encounter.

The decision below refused to extend *Mimms* to passengers. This decision does not appreciate the added dangers of passengers, and the disparate treatment of drivers and passengers muddies the bright line of *Mimms*. Both of these consequences, if accepted, endanger the lives of police officers and thus are contrary to the rights of victims and society CJLF was formed to advance. CJLF therefore has an interest in the case.

SUMMARY OF FACTS AND CASE

On June 8, 1994, at approximately 7:30 p.m., Trooper David Hughes of the Maryland State Police stopped a white 1994 Nissan Maxima after observing that it was going 64 miles per hour in a 55-mile-per-hour zone and had no license plate. See *State* v. *Wilson*, 664 A. 2d 1, 2 (Md. App. 1995). Both during the pursuit and after the stop, Trooper Hughes noted that the two passengers in the car "had turned and looked at him several times and had on several occasions ducked below the sight level and then reappeared." *Ibid*.

As Trooper Hughes approached the Maxima on foot, the driver, McNichols, left the vehicle. The trooper directed the driver to step towards him, and the two met midway between their vehicles. McNichols produced a Connecticut driver's license and stated that he had rental papers for the car inside the vehicle. During the entire encounter, McNichols appeared to be very nervous. Trooper Hughes instructed McNichols to return to the vehicle to get the rental documents. *Ibid*.

After McNichols reentered the car, Trooper Hughes ordered Wilson out of it. As Wilson followed the trooper's request to walk closer to the police vehicle, what appeared to be (and was) crack cocaine fell to the ground. Hughes then arrested Wilson. *Id*., at 2-3.

On January 10, 1995, the trial court granted defendant's suppression motion. The Maryland Court of Special Appeals

affirmed, finding that Trooper Hughes violated the Fourth Amendment when he asked Wilson, a passenger, to leave the car. *Id*., at 15.

SUMMARY OF ARGUMENT

A bright-line rule is appropriate for the frequently occurring situation demonstrated by the present case. Bright-line rules serve a useful purpose in the interpretation of the Fourth Amendment. Most importantly, such rules help clarify an immensely complex body of law. Since the primary focus of the Fourth Amendment is controlling the actions of law enforcement officers, a group with little formal legal training, efforts to keep Fourth Amendment law clear are consistently worthwhile. This need for simplicity is amplified by the method of enforcing the Fourth Amendment—the exclusionary rule. Since officers cannot be deterred by a body of law they cannot understand, bright-line rules can help make certain that the Fourth Amendment is observed.

Bright-line rules serve two other purposes: consistency and certainty. The inconsistent application of precedent is poisonous to Fourth Amendment law, given the high costs associated with the exclusionary rule. Bright-line rules can help avoid inconsistent application of otherwise muddy precedent. This consistency also makes the law more certain, thus allowing police to develop plans to comply with the Fourth Amendment. Such planning can greatly reduce the trade-off between effective law enforcement and the public's privacy.

Several times this Court has formulated such rules to help guide the police, public, and courts through the often confusing thickets of the Fourth Amendment. These cases demonstrate that this Court is willing to formulate such rules when there exists a common set of facts that can be governed by a clear rule, a need for rulemaking, and the rule complies with Fourth Amendment precedent.

Extending the bright-line rule of *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977) from drivers to passengers of stopped vehicles is consistent with this Court's Fourth Amendment bright-line jurisprudence. Since the present case involves a

simple extension of the rule in *Mimms*, the proposed rule readily satisfies the feasibility and need requirements. A bright-line rule is as relevant to encounters with passengers as it was to the officer-driver encounter in *Mimms*.

Extending *Mimms* to passengers is also consistent with precedent. The rule in *Mimms* was justified by balancing society's considerable interest in police safety against the minimal intrusion of ordering the driver to leave the car. The same balance holds in the present case. A passenger is at least as dangerous to officers as the driver of the stopped vehicle. The key for an officer to avoid assault or death is to control the encounter. The presence of a passenger at a vehicle stop divides the officer's attention and makes this control more difficult to maintain. In this situation, at least as dangerous as the one in *Mimms*, ordering the passenger out of the car is a reasonable tactic for maintaining control.

Ordering the passenger out of the vehicle is no more intrusive than the same order to the driver upheld in *Mimms*. Like the driver in *Mimms*, the passenger has already been inconvenienced by the stop. Contrary to the decision below, the passenger has little realistic chance of leaving. As in *Mimms*, the only question is whether the passenger shall be inconvenienced standing up or sitting down. There is thus no difference between the intrusiveness of the seizure in *Mimms* and the present case. Therefore, the rule of *Mimms* should be extended to passengers.

ARGUMENT

I. Bright-line rules serve a necessary and useful function in interpreting the Fourth Amendment.

The Fourth Amendment presents a dilemma. It is an immensely important part of the Constitution. Every arrest, search, and seizure made by any government agent in this country must satisfy the Fourth Amendment. To some, this amendment occupies "a place second to none in the Bill of Rights . . . ." *Harris* v. *United States*, 331 U. S. 145, 157 (1947) (Frankfurter, J., dissenting).

The Fourth Amendment's dilemma is that its importance is equalled by the difficulty of interpreting its vague text. See, *e.g.*, 1 W. LaFave, Search and Seizure § 1.1(a), pp. 5-6 (3d ed. 1996). This combination of vagueness and pervasiveness has led to a body of law unsurpassed in scope and complexity, with a five-volume, 3,300-page treatise devoted to its interpretation. See generally LaFave, *supra*.[2]

One way around this problem is the fashioning of bright-line rules to help guide the police and courts through the Fourth Amendment, an approach championed by the foremost advocate of the exclusionary rule. See LaFave, The Fourth Amendment in an Imperfect World: On Drawing 'Bright Lines' and 'Good Faith,' 43 U. Pitt. L. Rev. 307, 321 (1982). They make the Fourth Amendment more manageable by providing it with much-needed clarity, consistency, and certainty. It is therefore understandable that such rules have also found favor with the United States Supreme Court. This type of rule can and should be fashioned to govern the situation occurring in the present case.

A. Clarity.

Complexity is at best a necessary evil for a body of law. While some complexity is inherent in an endeavor as vast as regulating all searches and seizures, it should be minimized whenever possible. "Our constitutional law has become ever more complex in recent decades. That is, in itself, a regrettable development, for the law draws force from the clarity of its command and the certainty of its application." *Doggett* v. *United States*, 505 U. S. 647, 669 (1992) (Thomas, J., dissenting).

The need for simplifying the Fourth Amendment is particularly important because search and seizure law is primarily aimed at controlling the actions of police. See *United States* v. *Calandra*, 414 U. S. 338, 347 (1974). A body of law that is complex and confusing to lawyers, judges and scholars can be

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2. In comparison, it took Professor LaFave around 1,200 pages to explain all of the substantive criminal law. See W. LaFave & A. Scott, Substantive Criminal Law (1986).

particularly difficult to follow for officers with little, if any, formal legal training.

> "Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field." *New York* v. *Belton*, 453 U. S. 454, 458 (1981) (internal quotations omitted).

This is particularly relevant to the frequently hectic encounters classified as *Terry* stops. Such "necessarily swift action predicated upon the on-the-spot observations of the officer on the beat," *Terry* v. *Ohio*, 392 U. S. 1, 20 (1968), prevents detailed, nuanced analysis by the officer before the decision to stop is made. *Cf. United States* v. *Cortez*, 449 U. S. 411, 418 (1981) (courts must weigh evidence supporting a stop "not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement"). In such fast-acting situations, the guidance and clarity of bright-line rules is a useful tool.

The need for clarity in the Fourth Amendment is heightened even further by the method used to enforce it. The sole reason for the exclusionary rule is to promote adherence to Fourth Amendment principles by deterring police misconduct through the suppression of illegally obtained evidence. See, *e.g.*, *United States* v. *Leon*, 468 U. S. 897, 906 (1984); *Calandra*, *supra*, 414 U. S., at 348. In order for the exclusionary rule to deter, however, police must be able to understand the commands of the Fourth Amendment. If the rule is to work, "it must alter the behavior of individual law enforcement officers or the policies of their departments." *Leon*, *supra*, 468 U. S., at 918. If an officer cannot understand what the law commands, deterrence is impossible. And if deterrence fails, then there is no reason to apply the exclusionary rule. *United States* v. *Janis*, 428 U. S. 433, 454 (1976). It is therefore imperative for the Fourth

Amendment to be as clear as possible so that the courts may enforce it.

B. Consistency.

Another advantage of drawing bright lines is promoting judicial consistency. A rule so vague as to give the judges interpreting it uncontrolled discretion is not a rule of law, but a rule of "equity [which] varies like the Chancellor's foot." *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 417 (1975) (internal quotation marks omitted; brackets in original).

Such inconsistency is particularly poisonous to Fourth Amendment law, given the high costs associated with the exclusionary rule. A seemingly arbitrary application of the exclusionary rule by lower courts can only add to the public's inevitable alienation from our justice system that occurs when "[t]he criminal is to go free because the constable has blundered . . . ." *People* v. *Defore*, 150 N. E. 585, 587 (N. Y. 1926) (Cardozo, J.); see *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 413 (1971) (Burger, C. J., dissenting); see also 8 J. Wigmore, Evidence §2184a, p. 31, n. 1 (McNaughten rev. 1961). Indeed, "if applied indiscriminately it [the exclusionary rule] may well have the opposite effect of generating disrespect for the law and administration of justice." *Stone* v. *Powell*, 428 U. S. 465, 491 (1976).

The threat of inconsistent application to the effective administration of the Fourth Amendment is real. In *California* v. *Acevedo*, 500 U. S. 565 (1991), inconsistent application by the lower courts was an important factor in this Court's decision to abandon the *Chadwick-Sanders* rule governing searches of closed containers. *Chadwick* and *Sanders* extended the warrant requirement to protect some closed containers like luggage. See *United States* v. *Chadwick*, 433 U. S. 1, 13 (1977); *Arkansas* v. *Sanders*, 442 U. S. 753, 763-765 (1979). Yet under a line of cases starting with *Carroll* v. *United States*, 267 U. S. 132 (1925), the high court recognized that the warrant requirement could be dispensed with for searches of moving vehicles because the inherent mobility of vehicles often made obtaining a search warrant impractical. See *id.*, at 153. The conflict between *Chadwick-Sanders* and *Carroll* with regard to containers found in automobiles caused considerable confusion in the lower

courts. See *Acevedo*, *supra*, 500 U. S., at 576. Recognizing "the virtue of providing ' " ' "clear and unequivocal" ' " ' guidelines," the *Acevedo* Court adopted a bright-line rule and abandoned the *Chadwick-Sanders* line. *Id.*, at 577, 579 (quoting *Minnick* v. *Mississippi*, 498 U. S. 146, 151 (1990) (quoting *Arizona* v. *Roberson*, 486 U. S. 675, 682 (1988))). The *Acevedo* Court, when confronted by such confusion, "conclude[d] that it is better to adopt one clear-cut rule to govern automobile searches . . . ." *Id.*, at 579.

The consistency provided by bright-line rules thus supplements the efficient administration of justice. When the rules are clear, the lower courts will have fewer matters to disagree about, freeing up resources that would otherwise be spent resolving such disputes. See Supreme Court Rule 10 (conflicts among lower courts as principal ground for grant of certiorari).

Such efficiency is particularly important when administering compliance with *Terry* v. *Ohio*, 392 U. S. 1 (1968), where the alternative to judicial rulemaking is a case-by-case determination of "the totality of the circumstances . . . ." See *United States* v. *Cortez*, 449 U. S. 411, 417 (1981). If each case is to be determined on its own individual facts, then the ability of higher courts to guide lower courts is greatly circumscribed, since each case has its own unique "totality of the circumstances." Under this condition, a higher court's decision has less authority over lower courts that must decide each case on its necessarily unique facts. Bright-line rules, by limiting subtle factual distinctions, allow this Court to magnify the impact of its decisions, better enabling it to oversee the administration of the Fourth Amendment.

C. Certainty.

A further benefit of clear, consistently applied laws is certainty. Once the law enforcement profession understands what the Fourth Amendment requires, and is confident that this understanding will not be undermined by subsequent decisions, it will be better able to plan how to comply with the Fourth Amendment while maximizing its fight against crime. This is a benefit that is significantly encouraged by the promulgation of bright-line rules.

While police investigative techniques were traditionally informal and rarely reduced to writing, the modern trend is to " 'record enforcement practices in written form, usually referring to the written statements as "guidelines." ' " LaFave, Constitutional Rules for Police: A Matter of Style, 41 Syracuse L. Rev. 849, 867 (1990) (quoting F. Remington, *et al.*, Criminal Justice Administration (rev. ed. 1982)). Professor LaFave recognizes

> "[T]his is a most encouraging development, to be sure, for departmental policymaking regarding those police activities which are subject to constitutional restraint 'improves police performance' in four major ways: (1) 'Rulemaking enhances the quality of police decisions,' as it focuses attention on the fact that policy is being made, promotes the placing of decision-making authority in responsible and capable hands, increases the seriousness with which police face up to the implications of their practices for the efficiency of law enforcement and the liberty of citizens, promotes decision-making efficiency, and enhances police prestige and morale; (2) 'Rulemaking tends to ensure the fair and equal treatment of citizens,' as rules reduce the influence of bias, provide uniform standards for use in the training of personnel, and serve both to guide and to control police behavior; (3) 'Rulemaking increases the visibility of police policy decisions,' as the rulemaking process requires the departmental command structure to learn what officers in the field are doing, and informs other governmental agencies and the public about what the police are doing; and (4) 'Rulemaking offers the best hope we have for getting policemen consistently to obey and enforce constitutional norms that guarantee the liberty of the citizen' as rules made by the police are most likely to be obeyed by the police and, when not obeyed, are most likely to be effectively enforced by the department." *Id.*, at 867-868 (quoting Amsterdam, Perspectives on the Fourth Amendment, 58 Minn. L. Rev. 349, 423, 425, 426, 428 (1974) (footnotes omitted)).

By promoting a clear, consistently applied Fourth Amendment jurisprudence, bright-line rules help encourage this positive trend. The stability promoted by such precedents makes possible the planning needed to create departmental policies. People will

not plan when a body of law is so uncertain that it is unpredictable. A close parallel to this principle can be found in the doctrine of *stare decisis*. The most important role of *stare decisis* is preserving expectations. "*Stare decisis* provides some moorings so that men may trade and arrange their affairs with confidence. *Stare decisis* serves to take the capricious element out of law and to give stability to a society." Douglas, Stare Decisis, 49 Colum. L. Rev. 735, 736 (1949). The certainty and stability afforded by bright-line rules make police planning similarly easier, lessening the trade-off between following the Fourth Amendment and investigating crimes.

D. Precedent.

The best testimony for the validity of bright-line rules in Fourth Amendment law comes from this Court's precedents. In several decisions, this Court has demonstrated a willingness to draw such lines. These decisions demonstrate that clarity has a necessary place in Fourth Amendment jurisprudence.

1. United States v. Robinson.

One of the earliest examples of a bright-line Fourth Amendment rule is found in *United States* v. *Robinson*, 414 U. S. 218 (1973). In *Robinson*, the court below had held that an officer could not conduct a full search incident to an arrest for driving without a license, since such a search could not retrieve any evidence related to the crime for which the defendant was arrested. Instead, the circuit court held that under these particular facts, an officer could only conduct a frisk for weapons similar to the one in *Terry* v. *Ohio*, 392 U. S. 1 (1968). *Robinson*, 414 U. S., at 227.

The *Robinson* Court refused to make such a narrow, factual distinction. It rejected the notion that an officer's authority to search incident to an arrest was dependent upon such facts as the likelihood that the arrestee possessed evidence of the crime or the possibility that the suspect was armed. See *id.*, at 233-234. This Court chose to create a rule allowing a full search of the arrestee incident to *any* arrest.

> "A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick *ad hoc* judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search. The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification." *Id.*, at 235.

The ability of the *Robinson* Court to fashion a bright-line rule was derived from three factors. First, *Robinson* dealt with a situation, a lawful arrest, that is both distinct and frequently repeated. This made it possible for the Court to formulate a bright-line rule governing an appropriately narrow, but important, situation. No single rule can govern a wide variety of distinct settings. See *Illinois* v. *Gates*, 462 U. S. 213, 231-232 (1983). Thus, broad concepts such as probable cause or reasonable suspicion, which deal with a near-infinite variety of situations, cannot be " 'reduced to a neat set of legal rules' " that will govern every circumstance. See *United States* v. *Sokolow*, 490 U. S. 1, 7 (1989) (quoting *Illinois* v. *Gates*, 462 U. S. 213, 232 (1983)). *Robinson* recognized that narrower factual settings are capable of being analyzed under a clear, distinct rule.

The second factor that allowed the *Robinson* Court to draw a bright line was the need to eliminate guesswork. It understood that custodial arrests involved real dangers to police officers, see *Robinson*, *supra*, 414 U. S., at 234-235, and therefore required necessarily quick judgments by the officers. *Id.*, at 235. In this situation, a quick, easily understood rule is both practical and necessary.

The final factor that allowed the *Robinson* Court to draw the line was the rule's compatibility with Fourth Amendment precedent. If a search or seizure is inappropriate in a particular situation, there is no reason to sanction the invasion simply because a bright line can be drawn. Since there were at least some authorities "to support the broad statement of the authority to search incident to arrest," *id.*, at 232-233, the *Robinson* Court

could create a rule sanctioning searches incident to all lawful arrests. As shall be shown, the three *Robinson* factors are common to this Court's bright-line cases.

2. Dunaway v. New York.

Bright lines do not have to be inclusive. This Court is also willing to create clear rules that exclude evidence. In *Dunaway* v. *New York*, 442 U. S. 200 (1979), the police picked up defendant and took him to the station house for questioning, even though there was not probable cause for an arrest. *Id.*, at 203. New York attempted to justify this detention by advocating "a multifactor balancing test of 'reasonable police conduct under the circumstances' to cover all seizures that do not amount to technical arrests." *Id.*, at 213. In rejecting this test, the *Dunaway* Court drew a bright line in order to increase Fourth Amendment protections.

> "But the protections intended by the Framers could all too easily disappear in the consideration and balancing of the multifarious circumstances presented by different cases, especially when that balancing may be done in the first instance by police officers engaged in the 'often competitive enterprise of ferreting out crime.' *Johnson* v. *United States*, 333 U. S. 10, 14 (1948). A single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Id.*, at 213-214.

The same practical rationale that motivated the rulemaking in *Robinson* is found in the *Dunaway* decision. As in *Robinson*, the *Dunaway* Court refused to create a continuum of subtle factual variations, instead treating all detention for custodial interrogation as requiring probable cause. *Id.*, at 216. Once again, the Court found a category of common conduct that was capable of being governed by a single, clear rule.

The *Dunaway* Court also found a need for a bright-line rule. In the passage quoted above, the Court gave its reason for drawing the line—giving police officers, who frequently have little time to engage in the detailed analysis required by balancing tests, a "single, familiar standard" to guide them. *Id.*, at 213.

Finally, as in *Robinson*, the *Dunaway* Court found that its bright-line rule was consistent with Fourth Amendment precedent. See *id.*, at 214.

3. New York v. Belton.

The pattern that manifested itself in *Robinson* and *Dunaway* reappeared in *New York* v. *Belton*, 453 U. S. 454 (1981). As in *Robinson* and *Dunaway*, *Belton* dealt with a single, easily classified form of conduct: a search incident to the lawful, custodial arrest of an occupant of an automobile. *Id.*, at 455.

The *Belton* Court also found ample need for a bright-line rule for this category of searches. The principles governing searches incident to arrest first announced in *Chimel* v. *California*, 395 U. S. 752 (1969) "may be stated clearly enough, [but] courts have discovered the principle difficult to apply in specific cases." *Belton*, 453 U. S., at 458. The confusion in the law created a situation where a person "cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority." *Id.*, at 460. Therefore, it was necessary to craft " '[a] single familiar standard . . . to guide police officers' " whose time and Fourth Amendment expertise were limited. *Id.*, at 458 (quoting *Dunaway*, *supra*, 442 U. S., at 213-214) (brackets added by *Belton* Court).

Following the pattern established in *Robinson* and *Dunaway*, the *Belton* Court also made sure that the rule it formulated was consistent with precedent. Thus, the *Belton* Court relied on *Chimel* to justify announcing a bright-line rule that an officer making a custodial arrest of the occupant of a car may search the passenger compartment contemporaneous to the arrest. 453 U. S., at 460. Although it followed *Chimel*, the need to formulate a clear, "workable rule" guided the *Belton* Court's interpretation of precedent. *Ibid.* While the need for a bright line cannot dictate a particular result, it can guide a court's interpretation of Fourth Amendment precedents. *Belton* demonstrates that when a common set of facts is capable of being governed by a clear, readily administrated rule, the high court will make a reasonable effort to draw a bright line.

4. Michigan v. Summers.

Michigan v. *Summers*, 452 U. S. 692 (1981) provides another excellent demonstration of this Court's willingness to create bright-line rules to clarify the Fourth Amendment. As in the present case, *Summers* dealt with the police's power over an individual in a private residence that was being searched under a valid warrant. See *id.*, at 693-694.

Instead of adopting a case-by-case analysis under the reasonable suspicion standard of *Terry* v. *Ohio*, 392 U. S. 1 (1968), the *Summers* Court allowed police to detain any occupant of the premises who was encountered during the execution of a search warrant for drugs. See 452 U. S., at 705. Central to this decision were the same factors that compelled the Court to reach similar conclusions in *Robinson*, *Dunaway*, and *Belton*. The execution of a search warrant for contraband on a residence is a single, readily defined event that is nonetheless capable of subtle factual variation. For example, a person calmly leaving the property, such as Summers, see *id.*, at 701, could be deemed to be much less deserving of a *Terry* stop than someone fleeing the property upon sighting the police. See *California* v. *Hodari D.*, 499 U. S. 621, 623, n. 1 (1991); Hobson, Flight and *Terry*: Providing the Necessary Bright Line, 3 Maryland J. Contemp. Legal Issues 119 (1992).

As the *Summers* Court realized, it was impractical to require police executing a warrant to make such distinctions. Executing a search warrant for contraband involves a real "risk of harm to both the police and the occupants . . . ." 452 U. S., at 702-703. In such situations, extensive analysis is not always possible. Instead, officers must be allowed to make necessarily quick decisions. See *United States* v. *Robinson*, 414 U. S. 218, 235 (1973). Furthermore, when officers have substantial noninvestigative interests in conducting a search or seizure, the exclusionary rule will have little power to deter police conduct. See *Terry*, *supra*, 392 U. S., at 13-14. In recognition of these strong practical interests, the *Summers* Court fashioned its bright-line rule as an explicit rejection of a case-by-case approach to *Terry*. See 452 U. S., at 705, n. 19.

Finally, like the other bright-line cases, the rule in *Summers* was consistent with Supreme Court precedent. The warrant

provided the articulable individualized suspicion that satisfied *Terry*. See *id.*, at 703-704.

5. Pennsylvania v. Mimms.

The bright line closest to the present case is found in *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977) (*per curiam*). In *Mimms*, Philadelphia police officers stopped defendant for driving with an expired license plate. They asked Mimms to step out of his car and produce his driver's license and vehicle registration. As defendant left the car, officers noticed a large bulge under his sports jacket. A frisk of Mimms confirmed that he was carrying a handgun. The other occupant was also carrying a pistol. Defendant was convicted of carrying a concealed, deadly weapon and for carrying a firearm without a license. *Id.*, at 107.

The Pennsylvania Supreme Court struck down Mimms' conviction, holding that the officer's directive to defendant to leave the car was unreasonable because there were no " 'objective observable facts to support a suspicion that criminal activity was afoot or that the occupants of the vehicle posed a threat to police safety.' " *Id.*, at 108 (quoting *Commonwealth* v. *Mimms*, 370 A. 2d 1157, 1160 (Pa. 1977)).

This Court reversed Pennsylvania's high court. It did not choose to evaluate orders for drivers to leave stopped cars on a case-by-case basis. The state conceded that the officer "had no reason to suspect foul play from the particular driver at the time of the stop . . . ." *Id.*, at 109. Any justification for the order to leave the car must come from a higher level of generality than the facts of the case. Thus, when the *Mimms* Court chose to balance the interests of law enforcement and individual privacy, see *id.*, at 108-109, it was not balancing the interests of Mimms with the officers who stopped him. The *Mimms* Court chose to balance the general interests of all stopping officers and of all stopped drivers.

That balance required drawing a bright line in favor of officer safety. The Court had long "recognized the *inordinate* risks confronting an officer as he approaches a person seated in an automobile." *Id.*, at 110 (emphasis added). Enough violent incidents occurred at traffic stops to convince the Court to make

an officer's authority to order the driver out of the car independent from the reason for stopping the driver. See *ibid.* The risk of accidental harm from "passing traffic to an officer standing on the driver's side of the vehicle" further tipped the scales towards officer safety. *Id.*, at 111. Given the incidental intrusion from asking an already stopped driver to leave the car, see *ibid.*, the balance of interests supported allowing officers to order any driver out of a legally stopped automobile. See *ibid.*

While not as extensively analyzed as other cases, the *Mimms per curiam* opinion still contains the same characteristics as this Court's other bright-line cases. The officer's encounter with the driver of a stopped automobile is both distinct and frequently repeated. As in the other cases, this common set of facts was capable of subtle factual variation. One variable was the justification for stopping the car. Thus some argued that the danger to an officer may be a function of the seriousness of the offense for which the driver is stopped. See *id.*, at 119 (Stevens, J., dissenting). As Justice Stevens noted, this was but one of "the infinite variety of situations in which today's holding may be applied." *Id.*, at 120.

The *Mimms* Court also recognized the need for a bright-line rule. The vehicle stop created a "legitimate and weighty" risk to an officer's safety. The "inordinate risk confronting an officer as he approaches a person seated in an automobile," *id.*, at 110, simply does not lend itself to any detailed analysis by the officer in the field. A hard and fast rule was needed in order to prevent officers from being placed in dangerously ambiguous situations.

The line drawn by the *Mimms* Court was not perfectly bright. The decision stated that

> "we do not hold today that 'whenever an officer has an occasion to speak with the driver of a vehicle, he may also order the driver out of the car.' We hold only that once a motor vehicle has been lawfully detailed for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." *Id.*, at 111, n. 6 (quoting Stevens, J., dissenting, at 122).

Some defendants have invoked this passage to assert that officers do not have the authority to order the driver out of a vehicle stopped under the reasonable suspicion standard of *Terry* v. *Ohio*, 392 U. S. 1 (1968). See 4 W. LaFave, Search and Seizure § 9.5, p. 266 (3d ed. 1996). This contention is absurd, and this Court should take the opportunity in the present case to clarify the rule of *Mimms* to include *Terry* stops.

Finally, *Mimms*' bright line was consistent with precedent. The *Mimms* Court relied on the analytical bedrock of the Fourth Amendment—"the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry*, 392 U. S., at 19; see *Mimms*, 434 U. S., at 109. "Reasonableness, of course, depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.' " 434 U. S., at 109 (quoting *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 878 (1975)). Justifying its bright-line rule under this balancing test, see *id.*, at 110-111, brought the *Mimms* rule comfortably within this Court's Fourth Amendment jurisprudence. This same process can justify a bright-line rule in the present, nearly identical case.

II. The bright-line rule of *Mimms* should be extended to passengers of legally stopped vehicles.

A. Ability and Need.

The proposed rule in the present case is no more than a simple extension of the already existing bright-line rule of *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977) (*per curiam*) from drivers to passengers. Therefore, the discussion of this situation's susceptibility to and need for a bright-line rule is brief.

This Court is certainly able to draw a bright line in the present case. There is nothing about the passenger in the car that frustrates this Court's competence to make a clear rule. Extending *Mimms* to passengers will neither frustrate its clarity nor defeat its purpose.

The only difference between *Mimms* and the present case is that this Court should make clear that the rule extends to the occupants of vehicles validly stopped under *Terry* v. *Ohio*, 392

U. S. 1 (1968). A vehicle stopped under *Terry*'s reasonable suspicion of criminality poses at least as much danger to the officer as the traffic offender in *Mimms* or the present case. See 4 W. LaFave, Search and Seizure § 9.5, pp. 266-267 (3d ed. 1996); *United States* v. *White*, 648 F. 2d 29, 37-38 (D. C. Cir. 1981). This Court should make explicit in the present case the implicit scope of the rule in *Mimms*.

The need for a bright-line rule is at least as great in the present case as it is in *Mimms*. The danger to officers posed by passengers will be discussed in greater detail later. See *infra*, at 20-22. It is worth noting, however, that the vehicular stop creates a quickly developing encounter where detailed legal analysis is not practical. The presence of passengers neither slows down nor simplifies the encounter.

> "In threatening situations in which a violator, and possible occupants of the vehicle, confronts a police officer on the highway, the major threat to the officer is the fast-breaking characteristics of the situation. No one, in book or classroom, can adequately describe what will happen nor how fast it does happen. It is for this reason that the words 'taking command' are so very appropriate, as this phrase implies equally rapid action by the officer to halt and *hold* the fast-breaking threat to his/her personal safety." P. Weston, The Police Traffic Control Function 158 (4th ed. 1978) (emphasis in original).

The danger of traffic stops, see *Mimms*, *supra*, 434 U. S., at 110, is shown in the statistics. In the years 1984-1993, over 13% of all law enforcement officer fatalities occurred at traffic stops or pursuits. See U. S. Dept. of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics—1994, p. 358 (1995). This number exceeds the fatalities arising from most law enforcement activities. Family quarrels, burglaries, or robberies all cause fewer officer fatalities. See *ibid*. Even drug-related activities, whose dangers to officers have influenced this Court, see *Michigan* v. *Summers*, 452 U. S. 692, 702 (1981), kill fewer officers than traffic stops. See Sourcebook, at 358. Although the sheer volume of traffic stops accounts for these numbers, the fact is that many officers do die at traffic stops.

The need for a bright-line rule is thus at least as great in the present case as it was in *Mimms*. This need defeats the arguments of those who would extend *Mimms* to passengers only when the stop is for "suspicion of more serious criminal activity involving use of that vehicle . . . ." 4 LaFave, *supra*, § 9.5, at 269. This standard does not, and cannot, define what offenses are serious enough. It also ignores the real danger posed by traffic stops. See *Mimms*, *supra*, 434 U. S., at 110; *United States* v. *Robinson*, 414 U. S. 218, 234, n. 5 (1973). Finally, this proposal establishes two rules under *Mimms*, one for drivers and another for passengers, which can only serve to muddy *Mimms*' bright line. If *Mimms* is to extend to passengers, it must do so entirely.

B. Precedent.

Drawing a bright line in the present case is entirely consistent with this Court's precedents. Once again, *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977) (*per curiam*) is the focal point of the bright-line analysis. The differences between *Mimms* and the present case are minimal. The small extension of *Mimms* from drivers to passengers of stopped vehicles is thus consistent with precedent.

The *Mimms* Court arrived at its decision by balancing the interests of society against the intrusion on personal liberty of ordering stopped drivers out of their vehicles. See *id*., at 109. The *per curiam* opinion found the balance overwhelmingly in favor of the state. There is an extremely strong state interest in allowing police to order stopped drivers out of their vehicles. It was simply "too plain for argument that the State's proffered justification—the safety of the officer—is both legitimate and weighty." *Id*., at 110. Every vehicle stop was a potential threat to this important interest. "And we have specifically recognized the inordinate risk confronting an officer as he approaches a person seated in an automobile." *Ibid*.

Against this interest, the *Mimms* Court weighed the intrusion of the order to exit the car. This additional intrusion was "de minimus." The driver has already been lawfully detained; asking him to leave the car is no more than a " 'petty indignity.' " See *id*., at 111 (quoting *Terry* v. *Ohio*, 392 U. S. 1, 17 (1968)). Comparing the substantial benefits to these minimal

costs decisively favored the state. "What is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety." *Ibid.*

There is no difference between *Mimms* and the present case in the state's interests. The single most important determinant of officer safety is the officer's ability to control a given situation.

> "Improper control of situations or suspects is of particular importance to law enforcement officers since the officer represents a symbol of societal or normative control to any offender. The degree of control over the situation that is maintained by the law enforcement officer will affect the behavior of all parties in the encounter. The aspects of the physical, social, and psychological control of these incidents often dictate their eventual outcome." U. S. Dept. of Justice, Federal Bureau of Investigation, Killed in the Line of Duty 40 (1992).

As this Court noted in the context of executing search warrants, danger is minimized "if the officers *routinely* exercise unquestioned command of the situation." *Michigan* v. *Summers*, 452 U. S. 692, 703 (1981) (emphasis added).

Control is equally important to the safe execution of a traffic stop. The vehicle stop is a great source of assaults and homicides against police. See *Mimms*, *supra*, 434 U. S., at 110. Danger can be limited only if officers are allowed to control each stop in its entirety.

> "No vehicle check is routine: each places the officer in a potentially life-threatening situation. And, as the statistics show, an initial impression that you are in no danger is no guarantee of security. There is always an element of danger and no vehicle check should ever be undertaken in a relaxed or complacent manner." D. Rowland & J. Bailey, The Law Enforcement Handbook 76 (1985); see *Mimms*, 434 U. S., at 110.

The presence of a passenger only adds to the danger of an automobile stop. Each extra person is an additional variable for the officer to control. The presence of extra people inevitably divides the officer's attention. The greatest threat to any officer is an unsupervised, and thus uncontrolled, person. It is this

person who can assault or shoot an officer without giving the officer a chance to respond. At a traffic stop, an officer will naturally pay most attention to the offender, the driver. Therefore, the passenger may be more dangerous to the officer than the driver who was stopped.

An example of the danger posed by passengers is cited by the Federal Bureau of Investigation in its study of officer deaths.

> "In another example, the victim officer executed a traffic stop in which there were three individuals in the vehicle. The victim wanted to cite the driver for a traffic violation, disregarding the two passengers. One of the passengers exited the vehicle, approached the patrol car in which the officer was seated, and shot and killed the officer.
>
> "In some of these cases, it appears that the officer was a victim of 'tunnel vision,' that is, the focus of his or her approach was on one person, and the other people in the group were neglected or ignored, resulting in the officer's demise." Killed in the Line of Duty, *supra*, at 37.

The potential danger posed by passengers is also found in several cases that approved extending *Mimms* to passengers where officers found handguns on the passenger or hidden in the vehicle. See *People* v. *Robinson*, 543 N. E. 2d 733, 733 (N. Y. 1989) (*per curiam*) (loaded .357 magnum protruding from under passenger's seat); *State* v. *Ferrise*, 269 N. W. 2d 888, 889 (Minn. 1978) ("long-barreled gun" found between car door and passenger seat); *People* v. *Martinez*, 466 N. W. 2d 380, 382 (Mich. App. 1991) (unloaded nine-millimeter Walther PPK-S semiautomatic pistol under passenger side floorboard). The danger posed by passengers is reinforced by the FBI's study of officer fatalities. Fourteen of the officer fatalities studied by the FBI involved an encounter between an officer and more than one person. "Eleven of these killers were not the target of the officer's initial approach." Killed in the Line of Duty, *supra*, at 37. If an officer is not allowed to exert some control over the passenger, that officer runs the risk of not paying attention to those passengers with access to loaded handguns, with potentially fatal results.

Ordering a passenger outside the vehicle allows the officer to better control this potential danger. A passenger outside the

car is less able to hide movements, and is deprived of access to any weapons hidden in the vehicle. It is thus a recommended tactic for officers who sense danger from a traffic stop. See D. Rowland & J. Bailey, The Law Enforcement Handbook, *supra*, at 86-87. While all may not agree on the efficiency of this method, see *Mimms*, *supra*, 434 U. S., at 119 (Stevens, J., dissenting), it is certainly a reasonable tactic. See *id.*, at 110. The Fourth Amendment does not require this Court to choose between reasonable law enforcement methods. *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 453-454 (1990).

The interest in allowing an officer to order a passenger out of a stopped vehicle is as great or greater than the interest that supported the result in *Mimms*. Unless ordering the passenger to leave is substantially more intrusive than the order to the driver upheld in *Mimms*, this Court should extend *Mimms* to passengers.

The intrusiveness of the order in the present case must be analyzed in the context of *Mimms*' view of intrusiveness. The *Mimms* Court found ordering the driver of a stopped car to exit to be minimally intrusive. It rested this conclusion on two factors: "[1] The driver is being asked to expose to view very little more of his person than is already being exposed. [2] The police have already lawfully decided that the driver shall be briefly detained; the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it." *Mimms*, 434 U. S., at 111.

There is no difference between *Mimms* and the present case for the first factor. A passenger is as exposed as the driver before exiting the vehicle and similarly exposed upon leaving. Each intrusion is equally trivial.

The only possible difference lies in the second factor, the fact that there has already been a valid stop. Some have seized upon this distinction as a reason to prevent *Mimms* from extending to passengers. It is contended that while it may be permissible to intrude upon a driver who has already been identified as a traffic violator, it is simply too much to make the same imposition upon innocent passengers. See 4 W. LaFave, Search and Seizure § 9.5(a), pp. 267-268 (3d ed. 1996).

This analysis is too discriminating when it comes to the costs of being stopped. As this Court has noted, the harm of a traffic stop is virtually indistinguishable between driver and occupant.

> "We cannot assume that the physical and psychological intrusion visited upon the *occupants* of a vehicle by a random stop to check documents is of any less moment than that occasioned by a stop by border agents on roving patrol. Both of these stops generally entail law enforcement officers signaling a moving automobile to pull over to the side of the roadway, by means of a possibly unsettling show of authority. Both interfere with freedom of movement, are inconvenient, and consume time. Both may create substantial anxiety." *Delaware* v. *Prouse*, 440 U. S. 648, 657 (1979) (emphasis added).

The authority to order the driver out of the vehicle is not a part of the suspicion supporting the stop. The *Mimms* Court rejected the Pennsylvania Supreme Court's conclusion that some " 'objective observable facts to support a suspicion that criminal activity was afoot or that the occupants of the vehicle posed a threat to police safety' " was necessary before an officer could order the driver out of the vehicle. See 434 U. S., at 108 (quoting *Commonwealth* v. *Mimms*, 370 A. 2d 1157, 1160 (Pa. 1977)). Any justification for differentiating the intrusiveness of the stops in *Mimms* and the present case must rest on a distinction other than the initial suspicion behind the stop.

New York v. *Class*, 475 U. S. 106 (1986) does not tip the balance to the passenger. In *Class*, defendant got out of his vehicle and approached one officer after a traffic stop. *Id.*, at 108. The other officer opened the car door and reached in to move some papers obscuring the Vehicle Identification Number (VIN). In doing so, the officer observed a gun handle protruding from the driver's seat, leading to the gun's seizure and defendant's arrest. *Ibid.*

Part of *Class*' justification for upholding this search was that cases' similarity to the situation in *Mimms*.

> "When the officer's safety is less directly served by the detention, something more than objectively justifiable suspicion is necessary to justify the intrusion if the balance is to tip in favor of the legality of the governmental intru-

sion. In *Pennsylvania* v. *Mimms*, *supra*, at 107, the officers had personally observed the seized individual in the commission of a traffic offense before requesting that he exit his vehicle. . . . All three of the factors involved in *Mimms* and *Summers* are present in this case: the safety of the officers was served by the governmental intrusion; the intrusion was minimal; and the search stemmed from some probable cause focusing suspicion on the individual affected by the search. Indeed, here the officer's probable cause stemmed from directly observing respondent commit a violation of the law." *Id.*, at 117-118.

The decision below incorrectly invoked this passage to limit *Mimms* to drivers. See *State* v. *Wilson*, 664 A. 2d 1, 11 (Md. App. 1995). It is true that the probable cause supporting the traffic stop played some role in *Mimms*. Yet this factor played the tiniest of roles. In the section of the opinion dealing with the decision to keep *Class* from entering his car, the Court enunciated the driving force behind *Mimms*.

> "*While we impute to respondent no propensity for violence*, and while we are conscious of the fact that respondent here voluntarily left the vehicle, the facts of this case may be used to illustrate one of the principal justifications for the discretion given police officers by *Pennsylvania* v. *Mimms*: while in the driver's seat, respondent had a loaded pistol at hand. *Mimms* allows an officer to guard against that possibility by requiring the driver to exit the car briefly." *Class*, *supra*, 475 U. S., at 116 (emphasis added).

Thus, *Mimms* does not tie the officer's authority to order the driver out of the car to any suspicion arising from the traffic offense. It is "a concern for the safety of the police" that allows officers to "exercise their discretion to require a driver who commits a traffic violation to exit the vehicle even though *they lack any particularized reason for believing the driver possesses a weapon*. *Pennsylvania* v. *Mimms*." *Ibid.* (citation omitted; emphasis added).

Although the balance may tip more towards the passenger who has not committed any offense, it is by the lightest measure. Safety weighs at least as heavily for the officers in the present case as it did in *Mimms*. Given the overwhelming importance of

this interest and triviality of the intrusion, the absence of a common traffic violation does not tip the balance to the passenger. *Class* does not prevent the safety net of *Mimms* from covering passengers.

The court below in the present case noted that a passenger can freely leave the car while the stopped driver is not permitted this same freedom until the stop is concluded. *Wilson*, *supra*, 664 A. 2d, at 10. The order to exit the car "is the imposition of detention *per se*, and not a mere shift of the location of already established detention." *Ibid.*

This misunderstands the realities of the traffic stop. People are passengers in cars in order to get from one place to another with a minimum of expense, inconvenience, and time. The traffic stop frustrates these interests. A passenger who does not leave the driver behind will lose as much time and be as inconvenienced as the driver.

While the court below found that "[t]he passenger is presumptively free to abandon the driver to the clutches of the law and hail a cab," *ibid.*, this alternative does not realistically distinguish the fact that the passenger suffers similarly from the traffic stop. Unless the passenger can hail the cab from the car, that person will have to leave the vehicle to get the separate transportation, placing the passenger in the same situation as if ordered out by the officer. Hailing a cab will only lessen the loss of time and convenience caused by the initial stop; it will not eliminate these costs. Furthermore, taking a cab requires the passenger to assume additional expense in order to mitigate the consequences of a stop.

The lower court's abandonment hypothetical also ignores the reality of the driver-passenger relationship. Outside of commercial vehicles such as taxis, there is usually some personal relationship between the driver and the passenger. Only the most unusual relationships or situations will allow the passenger to abandon the driver to face the forces of the law alone. The reality of the vehicular stop is that it is generally as confining to the passenger as it is to the driver.

The only other possible difference in the effect of the stop between the driver and passenger is the fact that the stop publicly identifies the driver as having violated traffic laws. Ordering the

passenger out of the car may thus unfairly identify the passenger as one who has broken the law. This difference is no more than minimal. The real intrusion created by the vehicle stop is the inconvenience and delay created by the stop. The *Mimms* Court understood this when it summed up the intrusion suffered by the driver in that case. "The police have already lawfully decided that the driver shall be briefly detained; *the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it.*" 434 U. S., at 111 (emphasis added). For all practical purposes, the passenger is in the same situation. Defendant Wilson was going to be detained as long as his driver. The only question was in what position he would spend that time.

Wilson was potentially as or more dangerous to Trooper Hughes as his driver. Trooper Hughes' instruction to leave the car was no more intrusive to Wilson than it was to the driver. "Because the balance of convenience and danger is no different for passengers in stopped cars, the Court's logic necessarily encompasses the passenger." *Mimms*, 434 U. S., at 122 (Stevens, J., dissenting). It is time to take *Mimms* to its logical conclusion by extending its bright line to passengers.

CONCLUSION

The decision of the Maryland Court of Special Appeals should be reversed.

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